IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 75 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKOT MUNICIPAL CORPORATION

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. First Appeal No. 75 of 1984
MR PM RAVAL for Petitioner No. 1
MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 01/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

1. The Rajkot Municipal Corporation (hereinafter referred to as "the Corporation") has filed this First Appeal under Section 96 of the Code of Civil Procedure against the judgement and decree dated 20.1.1983 passed by the learned Civil Judge (Senior Division), Rajkot, in Special Civil Suit No. 7 of 1977 filed by the Gujarat Electricity Board (hereinafter referred to as "the Board") plaintiff. The learned judge by his impugned judgement has held that the plaintiff do recover Rs. 1,58,305.82 ps. (Rupees one lakh fifty eight thousand three hundred five and eighty two paise only) from the defendant Corporation with running interest at the rate of 6% per annum on the principle sum of Rs. 1,56,281.82 ps (Rupees one lakh fifty six thousand two hundred eighty one and eighty two paise only) from the date of filing of the suit till realisation of the amount together with costs of the suit.

2. The facts giving rise to this First Appeal are as under:

2.1 The plaintiff Board is a statutory Body constituted under the provisions of the Electricity Act and the defendant Corporation is also statutory body constituted under the Bombay municipal Corporation Act, 1949. The defendant Corporation is consumer of the plaintiff Board. The Corporation has installed an electric motor at Randarda Water tank for drawing water from the said lake. Formerly the industrial connection was for 60 H.P. but thereafter on 25.1.1968 it was changed to 100 H.P. The Board put electric meter at the site which was of Baroda make bearing serial No. 019037 having its capacity of 3 x 200/1 Amp. It was the plaintiff Board's case that the meter reading is to be taken by multiplying by 10.

2.2 It is the case of the plaintiff that for the period from February 1968 to November 1975 due to mistake the electricity energy bills given to the Corporation were given without multiplying the reading by 10. It was further stated that this mistake had come to the knowledge of the Board for the first time on 8.1.1976 when it was found out that the reading card was not tallying with the previous months' reading. It was further stated that the Board therefore checked the meter and found out the mistake. On 8.1.1976 there was joint inspection both by the offices of the Board and the Corporation.

2.3 After the aforesaid inspection the Board prepared a supplementary bill dated 15.2.1976 calling upon the Corporation to pay the amount of Rs. 1,56,281.82 for the period from February 1968 to November, 1975. The said supplementary bill was sent along with letter dated 16.2.1976.

2.4 As the Corporation refused to pay the said bill, the Board issued notice under Section 24 of the Electricity Act to the Corporation. The Corporation replied to the said notice and thereafter on 6.12.1976 the Board issued notice under the provisions of the Act for payment of the said bill. As the Corporation failed and neglected to make the payment, the plaintiff filed the present suit on 7.1.1977. It was stated that the mistake occurred in the bill has come to the knowledge of the Board for the first time on 8.1.1976 and after discussing the said mistake the aforesaid action was taken. In view of the same, the plaintiff prayed for difference of electricity bill of Rs. 1,56,281.82 and also interest at the rate of 14% from the date of notice and Rs. 201/- notice charges, in all a sum of Rs. 1,58,305.82.

2.5 The defendant Corporation filed written statement. In the written statement the defendant Corporation has denied the contentions made by the plaintiff. It was denied that the plaintiff had come to know the mistake for the first time on or about 8.1.1976. It was submitted that there was nothing wrong in the working of the meter and the same was technically correct. It was denied that the mistake of fact is occurred in calculating the electricity bill. It was stated that there are material mistakes and it is the case of the plaintiff. It was also stated that the suit is barred by limitation and it is not for a cause of action. The suit ought to have been filed within three years from the end of every year of consumption and in view of the same and therefore the suit is barred by limitation. It was further submitted that the mistake which has been alleged by the plaintiff is not a mistake but a gross negligence on the part of the plaintiff. It was submitted that the plaintiff has shown gross carelessness in calculating meter reading and preparing electricity bill despite the fact that they are having persons of adequate qualification who are appointed to carry out the said work. It was stated that the mistake as alleged could have been discovered within a reasonable period by the plaintiff and the officer connected with the work at at the time of taking the meter reading and preparing the bill in question and therefore there is no

justifiable cause of filing the present suit in this behalf.

2.6 The learned trial judge framed the issues at Exh. 12. The plaintiff has examined Mr. Khodaji Chudasama, an electrician working in the Board at Exh. 64. He has deposed that he used to take reading at Randarda lake where the electric supply is being given to the Corporation for drawing water from the said lake. He deposed that the Corporation used to run the water pump for 24 hours and at that rate there would be electric consumption of 1800 units per day. At that time he found that there was difference and he inquired about it and found that the reading was not multiplied by 10 and the bills of less energy were being supplied to the Corporation. He has further deposed that the meter was of Baroda make and there were instructions on the meter that the total reding should be multiplied by 10. He has further deposed that he informed Mr. Satyadev, Junior Engineer, serving in the Board about this mistake and Mr. Satyadev along with electrical engineer of the Corporation visited the place and checked the meter on that day. He has further deposed that formerly the total reading was not multiplied by 10 and this mistake continued for a considerably long period. He has also stated that there was an inspection carried out on 8.1.1976. The said inspection was in presence of electrical Engineer of the Corporation. He specifically stated that for the first time he came to know that there was a mistake in the meter reading and the said mistake was discovered on 8.1.1976 when joint inspection was taken.

2.7 The plaintiff also examined one Girin Khushalchand Kamdar at Exh. 67 who is serving in the Board in revenue Section. He has stated that the bills are prepared in the department and was sent to the defendant. He stated that he knows Chudasama, Officer of the Board. He has also stated that supplementary bill dated 14.2.1976 was also issued to the Corporation after discovery of the mistake. He has recognised the signature of Mr. Mangodi who has sent supplementary bill. He has also produced the original books of accounts 1968-69 to 1976-77 produced at Exh. 69. He has stated that the original bill was sent without multiplying by 10. After 8.1.1976 a revised bill was assessed after multiplying by 10.

2.8 The plaintiff has also examined one Laxmidas Monji Pujara at Exh. 71 who was working as accountant officer of Jamnagar Office at the relevant time. However,

from 1975 to 1980 he has worked as divisional accountant at Rajkot. He has stated that he has prepared the bill submitted to the defendant Corporation. He has produced several letters written by the Corporation at Exh. 74 to 97.

2.9 The plaintiff also examined Sanatkumar H. Trivedi at Exh. 99 who has served in the Board in the establishment department. Formerly, he was serving in revenue department. He has deposed at Exh. 99. He stated that meter reading card at Exh. 100 was prepared by Mr. J.K. Changla who was serving under him and that he knows his hand-writing. He has stated that it is his duty in connection with meter readers office. He has stated that whether the bill was sent after multiplying by ten was more at the relevant time. He has stated that to check the bill, the duty was of the senior clerk after verifying the bill.

2.10 The plaintiff thereafter examined Mr. M.H. Satyadev, an electrical engineer serving in the Board. He has deposed that Mr. Chudasama had informed him on 8.1.1976 that there was some mistake in the meter reading in the meter installed at Randarda lake. He has further deposed that Mr. Chudasama had informed him that the reading was not multiplied by 10 and that mistake seems to have been continued for a longer time. He has stated that there was some mistake in the reading the bill and the figures have not been multiplied by 10. He further deposed that he informed Mr. Shah, Executive Engineer, serving in the Board. Mr. Shah had instructed him that the meter be checked in the presence of electrical engineer of the Corporation. He has further deposed that on the same day in the afternoon he and Mr. Chandresha of the defendant Corporation went to Randarda lake and saw the meter and prepared a panchnama dated 8.1.1976. He has further deposed that the panchnama was signed by himself and Mr. Chandresha. Mr. Chandresha agreed that total reading was to be multiplied by 10. The original panchnama was produced at Exh. 109.

2.11 The plaintiff has examined Manibhai Mayashanker Raval at Exh. 110. He has stated that he is a photographer. He has stated that on 12.2.1982 had had taken photograph of the meter installed at Randarda lake. He has produced negatives at Exh. 111, 112 & 113 and photographs at Exh. 114, 115 and 116.

2.12 The plaintiff has also examined Tranbaklal Karsanji at Exh. 122. He has worked as meter tester of Gujarat Electricity Board, Rajkot, for 30 years. He has stated that formerly in the year 1967 there was electric

meter of simco company which was replaced by meter of Baroda Company on 25.1.1968. He has stated that formerly a meter of 60 H.P. was installed which was changed to 100 H.P.

2.13 The plaintiff has also examined Vasantaben J. Mehta at Exh. 124. She has stated she was appointed as Commissioner by the court for making a panchnama of the meter. She has stated that the photographer had taken photographs in her presence. Panchnama was also prepared in her presence which is produced at Exh. 125. She has stated that meter multiplied by 10 has also been written.

3. On behalf of the Corporation one Madhusudan S. Chhaya was examined at Exh. 134. He was working as Deputy City Engineer, Water Works Department. He has admitted that in the water work originally there was 60 H.P. which was changed to 100 H.P. He has also stated that the meter was Baroda make. He has deposed that it is not true that the total figures were to be multiplied by 10 and the Board has committed mistake in preparing bills. He has also stated that after discovering the mistake now the Corporation pays revised bills which are multiplied by 10.

4. As stated above, the learned judge after considering the oral as well as documentary evidences which have been produced by the parties, came to the conclusion that the plaintiff proved that actual consumption of energy was to be calculated by multiplying meter reading by 10. It was further held that the plaintiff proved that the electricity energy bills for the period February, 1968 to November, 1975 were submitted under mistake to the defendant Corporation. The site officers of the Corporation and the Board had made a joint inspection on 8.1.1976 and report was prepared and signed by both the parties. In view of the same, the learned judge has held that the plaintiff has proved that it is entitled to claim Rs. 1,56,281.82 ps. as per statement and supplementary bill. The learned judge has negatived the contention of the defendant that the plaintiff's suit is barred by limitation. The learned judge has also negatived the contention of the defendant that the suit notice is not legal and valid as per the requirement of Section 487 of the Bombay Municipal Corporation Act.

5. Being aggrieved and dissatisfied with the said decision of the learned judge, the appellant Corporation has filed First Appeal before this court somewhere in 1984 and the matter was admitted and placed for final

hearing before this court. Mr. H.P. Raval, learned advocate for the appellant Corporation has invited our attention to copy of the plaint, written statement and also relevant oral as well as documentary evidence in this behalf. The learned counsel for the Corporation submitted that during February 1968 to 1975, which was a very long period and with reasonable diligence the officers of the Board could have found out the mistake that the bills were sent by them without multiplying 10. He submitted that there is a gross negligence on the part of the plaintiff Board as well as its Officers. He submitted that the Board has very efficient and intelligible persons with adequate qualifications who are appointed in connection with electric consumption as well as preparing the bills. In view of the same, the officers of the plaintiff Board could have discovered the mistake within a reasonable time regarding meter reading. He therefore submitted that this court may not accept the plea that the mistake came to the knowledge of the plaintiff only on 8.1.1976 when there was a joint inspection by defendant and the plaintiff. He further submitted that in any case the Board sent only supplementary bill dated 15.2.1976 and in view of the same the suit filed by the plaintiff Board on 7.1.1977 is clearly barred by period of limitation. Alternatively the learned counsel also submitted that even if the first contention is not accepted, then the suit ought to have been filed within three years from the month of consumption of electricity and in view of bills of various dates involved prior to the date of filing the suit, the suit is barred by limitations. In his submission, the learned counsel stated, that as the suit is filed in January, 1977, the bills from January 1974 to 1977 can be recovered and not prior to that period.

5.1 He has also relied on Section 17 of the Limitation Act and also Section 72 of the Contract Act. Section 17 of the Limitation Act, 1963 reads as follows:

Sec. 17 "Effect of fraud or mistake - (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act -

(a) (b) xxxxxxx

(c) the suit or application is for relief from the consequences of a mistake

(d) xxxxxxx

the period of limitation shall not begin to run

until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it, or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production."

Section 72 of teh Contract Act, 1872 reads thus:

"Liability of person to whom money is paid or thing delivered, by mistake or under coercion - A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it."

5.2 In support of the aforesaid contention, the learned counsel for the appellant has relied on the judgement of Queen's Bench Division in the case of PHILLIPS HIGGINS VS. HARPER (January 14, 1954) All England Law Reports, Vol. 1, page 116. He has relied on the relevant observations on page 119 which are as follows:

"But there is not, in respect of mistake, any provision similar to (b). The section does not apply to the case of a right of action which is concealed from the plaintiff by a mistake. What, then, is the meaning of provision (c)? The right of action is for relief from the consequences of a mistake. It seems to me that this wording is carefully chosen to indicate a class of action where a mistake has been made and has had certain consequences and the plaintiff is seeking to be relieved from those consequences. Familiar mistakes are, (i) money paid in consequence of a mistake - the mistake is made, in consequence of the mistake the money is paid, and the action is to recover that money back; (ii) there may be a contract entered into in consequence of a mistake, and the action is to obtain the rescission, or, in some cases, the rectification, of the contract; (iii) there may be an account settled in consequence of mistakes, and, if the mistakes are sufficiently serious, there can be a re-opening of the account."

5.3 The learned counsel for the appellant has also relied on Halsbury's Law of England, 3rd Edition, Vol.

24, page 320, paragraph 635 which reads thus:

"Position apart from statute - In the case of an action at common law for money had and received, time formerly ran from the date of payment and not from the discovery of the mistake. Where a proceeding in equity was analogous to a common law action for money had and received, the period of limitation, applied by analogy, likewise ran from the payment. Where, however, a plaintiff was claiming purely equitable relief, the period of limitation applied by analogy ran from the time when the plaintiff discovered or had reasonable means of discovering the mistake."

5.4 The learned counsel for the appellant has also relied on the judgement of the Madras High Court in the case of THE RAMANATHAPURAM MARKET COMMITTEE VIRUDHUNAGAR AND OTHERS VS. EAST INDIA CORPORATION LTD., MADURAI reported in AIR 1976 Madras 323, particularly, para 14 on page 328 which reads as under:

"By the use of the phrase "with reasonable diligence" in Section 17 of the Act, the Legislature has given scope to the defendant to contend that the date of knowledge or discovery pleaded is not the sure date of such discovery of mistake or fraud. It is open to the defendant to establish that "with reasonable diligence" the plaintiff could have discovered the fraud or the mistake earlier. The plaintiff, therefore, is not mechanically permitted to adduce a plea over the matter in issue as a step in aid to maintain the action. Where the legality of some proceeding is the matter in dispute between the parties, he who maintains its legality and seeks to take advantage of it, cannot rely upon the proceeding itself as a bar to the adverse party."

6. Mr. J.R. Nanavati, learned counsel for the plaintiff Board has tried to support the reasoning of the learned judge. He has also relied on the evidence produced by the Board which we have discussed. He has also relied on Section 72 of the Contract Act and Section 17(1)c) of the Limitation Act and contended that in this case though there is a mistake in issuing bills from February 1968 to November 1975, the mistake was discovered on 8.1.1976 and therefore when the present suit is filed in January, 1977 the same was within the period of limitation. He submitted that from the overall

consideration and evidence on record it is an admitted fact that the meter was changed in 1968 and the meter itself prescribes the condition that bill are to be multiplied by 10. The officers of the Board by misunderstanding issued bills without multiplying 10 and since they discovered the said error they informed the Corporation and a joint inspection was done and supplementary bill was prepared on 15.2.1976. He submitted that as the Corporation failed and neglected to pay supplementary bills, the suit has been filed. However, he has stated that the Corporation realised the fact that there was a mistake in the bill. The Board has prepared revised bill multiplying by 10 and now the Corporation has paid the bills. He therefore submitted that in view of the same, this is a clear case of a mistake on the part of the Board which has been rectified in January, 1976.

6.1 The learned counsel has invited our attention to the letter dated 15.2.1976 at Exh. 74 addressed by the Board to the Corporation. In the said letter it was clearly stated that due to oversight the multiplication ratio of 10 was not taken at the preparing the bill for the period February 1968 to November, 1975. Due to this every month the connection is short billed. A statement was prepared claiming Rs. 1,56,281.82 ps. Detailed statement was annexed along with the said letter. The Corporation vide its letter dated 21.2.1976 at Exh. 75 denied the said contention. The learned counsel has invited our attention to the notice dated 30.11.1976 at Exh. 77 issued by the Board to the Corporation in connection with recovery of the said bill. Along with the said letter a bill under Section 24(i) of the Indian Electricity Act, 1910 was issued to the Corporation which is at Exh. 77. He has also invited our attention to the notice dated 6.12.1976 addressed by the Board to the Commissioner in this behalf produced at Exh. 78. It was the case fo the Board that due to the said mistake the bills were not properly prepared and issued and there should not be reasons for the Corporation for not paying the outstanding dues. In fact, the Corporation has consumed power accordingly and they are liable to make payment.

6.2 From the evidence on record, we are of the view that there are written instructions that final reading are to be multiplied by 10 and bills are to be given accordingly. As per the evidence, the subsequent bills are issued after multiplying by 10, to the Corporation and the Corporation was paying the said bills right from 1976 onwards. Thus, from the record it appears that

there was some omission by meter reader in taking meter reading particularly when the subsequent meter was fixed on 8.1.1968. We are also of the view that in the new meter itself, a condition was inscribed that the same should be read multiplied by 10 and when the final bills is to be prepared the same is to be multiplied by 10. However, due to inadvertence or error or mistake of the meter reader the bill was issued as it is without multiplying by 10. This fact has been proved by the Board by the panchnama prepared on 8.1.1976 in presence of the officers of the Corporation. The Board has shown a reasonable diligence in discovering the mistake and oral evidence clearly proved that there was sheer mistake on the part of the meter reader.

7. In our view the plaintiff has produced copy of entries from the khatavahi which is at Exh. 69. Now what is to be done is to multiply the bill by 10 in order to give correct bill. The bill is produced at Exh. 68. It can be seen that the plaintiff Board has proved before the court that the supplementary bill issued is as per the measurement of the meter. The figure mentioned tallies with the meter.

7.1 As regards the contention of limitation raised by the learned counsel for the appellant, we have also quoted section 72 of the Contract Act and Section 17 of the Limitation Act. From the facts it clearly appears that the bills were issued for the period February, 1968 and November 1975 under mistake and the mistake was duly discovered on 8.1.1976 as per the evidence of Mr. Chudasama at Exh. 64. Since the plaintiff discovered immediately bill dated 15.2.1976 was issued and as the defendant failed and neglected to pay the dues, suit was filed on 7.1.1977. As per the provisions of the Limitation Act, particularly, Section 17(1)(c) of the Act suit was to be filed from the date of consequences of mistake. The period of limitation shall not begin to run until the plaintiff has discovered the fraud or mistake or could, with reasonable diligence, have discovered it.

7.2 We have already held that the plaintiff officers have with reasonable diligence been able to find out the mistake in the year 1976 and therefore the suit filed by the plaintiff in the year 1977 is clearly within the period of limitation.

7.2A This is a clear case of mistake. Section 72 of the Contract Act provides liability of person to whom money is paid, or thing delivered, by mistake or under coercion. This Section allows recovery of moneys paid

voluntarily, without compulsion. The statutory right to recover money under this section, cannot be rejected on the ground that, upon a consideration of the whole circumstances, it is not equitable that the money should be repaid. The section lays down a clear and unambiguous position of law entitling a party to the relief claimed by him. Mistake of a payer as to material fact is, in certain circumstances, recoverable. Mistake-misjudgement here means lack of knowledge. Section 17(1)(c) of the Limitation Act provides that where in case of any suit or application for which a period of limitation is prescribed by this Act - the suit or application is for relief from the consequences of a mistake. The party seeking to recover a payment to show not only that he was mistaken as to facts but also that it was such a mistake which caused him to pay.

7.3 No other contention has been raised by the appellant defendant. In view of the same, the appeal is dismissed. The judgement and decree of the learned judge dated 20.1.1983 passed by the learned Civil Judge (S.D.), Rajkot in Special Civil Suit No. 7 of 1977 is confirmed. The plaintiff do recover Rs. 1,58,305.82 ps. from the defendant Corporation with running interest at the rate of 6% per annum on the principal sum of Rs. 1,56,281.82 ps from the date of filing of the suit till realisation of the amount together with costs of teh suit.

8. Before we part with the judgement, we are of the view that in this case the decree has been passed on 20.1.1983 and thereafter appeal has been filed by the defendant. Though this court has not granted any stay, we are informed that defendant Corporation has not paid the amount to the plaintiff nor the Board has taken any execution proceedings and therefore, the Corporation has not paid any amount to the plaintiff Board. In this case the plaintiff Board is a public body and the defendant Corporation is also public body and therefore we hope and trust that defendant will pay to the plaintiff the decretal amount without insisting for necessary execution after the period of limitation.

9. The appeal is dismissed with costs.

(K.R. VYAS, J)

(K.M. MEHTA,J)
(pkn)